

**DEPARTMENT OF HEALTH SERVICES
DIVISION OF LICENSING SERVICES
OFFICE OF CHILD CARE LICENSING
#SP-031-DLS-CCL**

**INTERPRETATION OF THE TERM "TUTORING PROVIDED BY PUBLIC
SCHOOLS SOLELY TO IMPROVE SCHOOL PERFORMANCE" IN
A.R.S. § 36-884(5)**

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

The purpose of this substantive policy statement is to clarify how the Arizona Department of Health Services (Department) interprets the phrase “tutoring provided by public schools solely to improve school performance”, for the purpose of granting an exemption to a public school from being licensed as a child care facility, under A.R.S. § 36-884(5).

Child care is defined in A.R.S. § 36-881(2) as:

“the care, supervision and guidance of a child or children, unaccompanied by a parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, in a place other than the child's or the children's own home or homes.”

A child care facility is defined in A.R.S. § 36-881(3) as:

“any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor.”

An exemption from licensure is provided in A.R.S. § 36-884(5), which states:

“This article does not apply to the care given to children by or in:

“Any facility that provides training only in specific subjects, including dancing, drama, music, self-defense or religion and tutoring provided by public schools solely to improve school performance.”

This substantive policy addresses the exemption for “tutoring provided by public schools solely to improve school performance,” which contains two components: 1) tutoring provided by public schools and 2) solely to improve school performance.

“Tutoring” is defined in Merriam Webster's dictionary as: to teach or guide, usually individually, in a special subject, or for a particular purpose. This definition contains three factors that are reviewed by the Department in determining whether a public school is providing tutoring. The three factors are: 1) to teach or guide, 2) usually individually, and 3) in a special subject or for a particular purpose.

Regarding the first factor, the Department interprets the phrase “to teach or guide” in the definition of “tutoring” to mean to academically instruct or impart academic knowledge or skill. A method of providing academic instruction or knowledge may be found in a structured educational program for a student who displays below average performance in a particular academic subject, or extra academic instruction to a student who achieves average or above average performance in a particular subject.

A person who teaches or guides a student must be qualified and knowledgeable in the academic subject in which the person is offering instruction to the student. The person who is to teach or guide may be an advanced student, a certified teacher, or a person specializing in an academic subject.

To teach or guide is different than to provide “child care services”, which is defined in R9-5-101(25) as “the range of activities and programs provided by a licensee to a child, including personal care, supervision, education, guidance, and transportation.” Child care services encompass a wide array of activities and programs and a child care facility is licensed to protect the health and safety of enrolled children. When teaching or guiding a student, the focus is on providing instruction in a specific subject or subjects to improve academic performance.

The second factor to be evaluated is “usually individually.” While the term “usually” indicates that tutoring is commonly provided on a single person basis, the term does not require that the tutoring always be provided on an individual basis. Thus, tutoring may

be provided to students in a group. However, each student must have instruction based on the student's individual academic area of need. Once the individual academic area of need is identified, the student may participate in groups throughout much of the tutoring. When reviewing the third factor, the Department considers whether the instruction is in a “special subject” or for a particular purpose. “Special subject” in the definition “tutoring” means an academic subject in which a student receives supplemental instruction. The supplemental instruction must be in addition to the instruction taught during a regular school day. A typical special subject would be in the academic areas of reading, writing, math, science, and/or social studies. The Department interprets “particular purpose” in the definition of “tutoring” to mean to increase the student's understanding of the specific academic subject and to improve the student's school performance.

After reviewing the three factors, the Department will determine whether a public school is providing tutoring services. If the Department determines the public school is providing tutoring, the Department will consider whether the tutoring is being provided “solely to improve school performance.”

The way for a public school to satisfy the “solely to improve school performance” component is for a public school to establish a tutoring program and enter into a contract with the Arizona Department of Education to provide the tutoring program to students at the public school. The tutoring program would include performance based assessments and annual evaluations of each student’s performance.

If the Department determines a public school is providing tutoring solely to improve school performance, the public school is not required to be licensed as a child care facility because of the tutoring exemption in A.R.S. § 36-884(5). If the Department determines the public school is providing child care services and not tutoring, the public school is required to be licensed.

If the Department makes a decision that the exemption does not apply and takes an enforcement action, the enforcement action may be appealed according to A.R.S. §§ 41-1092 et seq.